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10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
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13 CAPITAL PARTNERS FUNDING,  
14 LLC,

CASE NO. 13-CV-2972 W (RBB)

15 vs.  
16

Plaintiff,

**SUPPLEMENTAL ORDER RE.  
PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT**

17 BMG LOGISTICS, INC., et al.,  
18

Defendants.  
19

20 On March 17, 2014, Plaintiff Capital Partners Funding, LLC filed a motion for  
21 default judgment. On May 20, 2014, this Court entered an order granting the motion  
22 as to Capital's request for default judgment as to (1) BMI with respect to the causes of  
23 action for breach of the Factoring Agreement, breach of the covenant of good faith and  
24 fair dealing, intentional misrepresentation, negligent misrepresentation, accounts  
25 stated, and unfair competition; and (2) Brianna Goodwin with respect to the second  
26 cause of action for breach of the Guaranty Agreement. (*See Default Judgement Order*  
27 [Doc. 10], 11:16–23.) The order denied the motion in all other respects, including the  
28 request for damages, prejudgement interest and attorneys' fees on the ground that

1 Capital had not provided sufficient evidence establishing its damage claims. (*Id.*,  
2 6:11–8:2.) However, the order granted Capital leave to file a supplemental brief in  
3 support of its claimed damages, pre-judgment interest, and attorneys’ fees and costs.  
4 (*Id.*, 11:25–12:2.)

5 Capital has now filed its supplemental brief, along with additional evidence in  
6 support of its damage claims.

7  
8 **I. BACKGROUND**

9 The following facts are taken from this Court’s Default Judgment Order.

10 Plaintiff Capital Partners Funding, LLC (“Capital”), is a factoring provider.  
11 (*Compl.* [Doc. 1] ¶ 11.) Factoring is a financial transaction whereby a business sells its  
12 accounts receivables to a third party, such as Capital, in exchange for cash. (*Id.*) The  
13 third party then collects the money owed (i.e., the account receivable) from the  
14 customer. (*Id.*)

15 On or about November 18, 2011, Capital entered into the Factoring Master  
16 Agreement (the “Agreement”) with BMG Logistics, Inc. (“BMG”) (*Compl.* Ex. A.)  
17 On the same day, Defendant Brianna Goodwin, BMG’s president, executed a  
18 Continuing Guaranty and Security Agreement (the “Guaranty”). (*Id.* ¶ 5, Ex. B.)

19 Under the Agreement, Capital agreed to purchase BMG’s accounts receivables.  
20 (*Compl.* ¶ 12.) Section 4, however, gives Capital the right to require that BMG  
21 “repurchase, by payment of the unpaid Face Amount thereof, together with any unpaid  
22 fees relating to the Purchased Account, on demand, or at the Purchaser’s option, by  
23 Purchaser’s charge to the Reserve Account.” (*Id.* ¶ 14, Ex. A at ¶ 4.1.) Additionally,  
24 section 16 further requires BMG to reimburse Capital for the actual amount of costs  
25 and expenses incurred in connection with the enforcement of the Agreement. (*Id.* ¶  
26 16, Ex. A at ¶ 16.1.) Under the Guaranty, Defendant Brianna Goodwin personally  
27 guaranteed BMG’s prompt payment of any and all indebtedness arising under the  
28 Agreement. (*Id.* ¶ 19, Ex. B at ¶ 2.1.)

1        Shortly after entering the Agreement, Capital purchased accounts receivables  
 2 from BMG. (*Compl.* ¶ 12.) Several of the accounts became delinquent because they  
 3 remained unpaid past the late payment date specified in the Agreement. (*Id.* ¶ 13.)  
 4 Capital alleges the delinquent accounts totaled \$42,080.00 (the “Repurchase Price”).  
 5 (*Id.*) Additionally, as of January 9, 2013, BMG allegedly incurred service charges and  
 6 fees of \$58,780.42 (the “Accrued Fees”). (*Id.* ¶ 14.) Despite Capital’s repeated  
 7 attempts to collect from BMG the Repurchase Price and Accrued Fees, BMG failed to  
 8 repurchase any delinquent accounts. (*Id.* ¶ 15.)

9        On December 11, 2013, Capital filed this lawsuit. The Complaint asserts seven  
 10 causes of action for: (1) breach of the Agreement; (2) breach of the Guaranty;  
 11 (3) breach of the covenant of good faith and fair dealing; (4) intentional  
 12 misrepresentation; (5) negligent misrepresentation; (6) accounts stated; and (7) Unfair  
 13 Competition under California Business & Professions Code §§ 17200, *et seq.*

14        On January 7, 2014, Defendants Joe Goodwin, Brianna Goodwin and BMG were  
 15 served with the Summons and Complaint. (*See Summons* [Docs. 4–6].) Despite being  
 16 served, Defendants did not respond to the Complaint or otherwise appear in this action.  
 17 Accordingly, on February 13, 2014, Capital filed a request for default, which was  
 18 entered on February 14, 2014. (*See Entry of Default* [Doc. 8].)

19        As stated above, on May 20, 2014, this Court issued the Default Judgement  
 20 Order, which granted in part and denied in part Capital’s motion, and allowed Capital  
 21 leave to file a supplemental brief and evidence supporting its damage claims. On June  
 22 10, 2014, Capital filed its supplemental brief and evidence.

## 23 24 **II. STANDARD.**

25        Rule 55(b)(2) of the Federal Rules of Civil Procedure governs applications to the  
 26 court for default judgment. See Fed. R. Civ. P. 55(b)(2). Default judgment is available  
 27 as long as the plaintiff establishes (1) defendant has been served with the summons and  
 28 complaint and default was entered for their failure to appear; (2) defendant is neither

1 a minor nor an incompetent person; (3) defendant is not in military service or not  
2 otherwise subject to the Soldiers and Sailors Relief Act of 1940; and (4) if defendant  
3 has appeared in the action, that defendant was provided with notice of the application  
4 for default judgment at least seven days prior to the hearing. See, e.g., Fed. R. Civ. P.  
5 55; Twentieth Century Fox Film Corp. v. Streeter, 438 F. Supp. 2d 1065, 1070 (D.  
6 Ariz. 2006).

7 Entry of default judgment is within the trial court's discretion. See Taylor Made  
8 Golf Co. v. Carsten Sports, Ltd., 175 F.R.D. 658, 660 (S.D. Cal. 1997) (Brewster, J.)  
9 (citing Lau Ah Yew v. Dulles, 236 F.2d 415, 416 (9th Cir. 1956)). In making this  
10 determination, the court considers the following factors: (1) the possibility of prejudice  
11 to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the  
12 complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute  
13 concerning the material facts, (6) whether the default was due to excusable neglect,  
14 and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring  
15 decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

16 Upon entry of default, the factual allegations in plaintiff's complaint, except those  
17 relating to damages, are deemed admitted. E.g., Televideo Sys., Inc. v. Heidenthal, 826  
18 F.2d 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United Fin. Grp., 559 F.2d 557,  
19 560 (9th Cir. 1977)). Where the amount of damages claimed is a liquidated sum or  
20 capable of mathematical calculation, the court may enter a default judgment without  
21 a hearing. Davis v. Fendler, 650 F.2d 1154, 1161 (9th Cir. 1981). When it is necessary  
22 for the plaintiff to prove unliquidated or punitive damages, the court may require  
23 plaintiff to file declarations or affidavits providing evidence for damages in lieu of a full  
24 evidentiary hearing. Transportes Aereos De Angola v. Jet Traders Invest. Corp., 624  
25 F.Supp. 264, 266 (D. Del. 1985).

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1 **III. DISCUSSION**

2 This Court's Default Judgement Order has already found that a default judgment  
3 is appropriate as to (1) Defendant BMI with respect to the causes of action for breach  
4 of the Factoring Agreement, breach of the covenant of good faith and fair dealing,  
5 intentional misrepresentation, negligent misrepresentation, accounts stated, and unfair  
6 competition; and (2) Defendant Brianna Goodwin with respect to the second cause of  
7 action for breach of the Guaranty Agreement. (*See Default Judgement Order*, 11:16–23.)  
8 The sole issue remaining is Capital's damages.

9 Capital seeks \$193,597.38 in damages as a result of the breach of the Agreement  
10 and Guaranty. (*P&A* [Doc. 9] 9:27.) This damages figure consists of the following:  
11 (1) the Repurchase Price of \$42,080; (2) the Accrued Fees of \$58,780.42;  
12 (3) \$65,893.99 in pre-judgment interest; and \$21,163.11 in attorneys' fees and costs  
13 incurred in enforcing the Agreement. (*Id.* 9:5–26.)

14 In order to prove-up the Repurchase Price and Accrued Fees, Capital relies on  
15 the supplemental declaration of Juan Estrada. (*Supp. Brief* [Doc. 11], 1:15–2:21 citing  
16 *Estrada Supp. Dec.* [Doc. 11-1].) Mr. Estrada is the Senior Vice President of Operations  
17 at Capital. (*Estrada Supp. Dec.*, ¶ 1.) In his supplemental declaration, Mr. Estrada  
18 explains how the Factoring Agreement operates, including the calculation of expenses  
19 and interest, and explains how the attached BMG Client Activity Statement supports  
20 the Repurchase Price and Accrued Fees. (*See id.*, Ex. A.) Accordingly, the Court finds  
21 that Mr. Estrada's supplemental declaration, along with the attached activity statement,  
22 supports the Repurchase Price, Accrued Fees and pre-judgment-interest components  
23 of Capital's claimed damages.

24 In support of the attorneys' fees and costs, Capital relies on the supplemental  
25 declaration of Norma Garcia. (*Supp. Brief*, 2:24–3:3, citing *Garcia Supp. Dec.* [Doc. 11-  
26 4].) Ms. Garcia is the attorney in charge of representing Capital. (*Garcia Supp. Dec.*,  
27 ¶ 1.) In support of the claimed attorneys' fees and costs, Ms. Garcia has submitted a  
28 breakdown of the time spent on this matter by each billing attorney, with their

1 respective billing rates. (*Id.*, ¶ 3, Ex. C [Doc. 11-5].) Additionally, Ms. Garcia has  
2 submitted an expense/cost report that details the out-of-pocket costs. (*Id.* ¶ 3, Ex. D  
3 [Doc. 11-6].) Based on Ms. Garcia's declaration and the submitted exhibits, the Court  
4 also finds Capital is also entitled to an award of \$21,163.11 in attorneys' fees and costs.  
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6 **IV. CONCLUSION & ORDER**

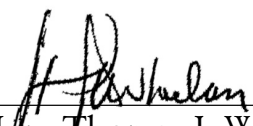
7 For the reasons discussed above, as well as in this Court's May 20, 2014 Default  
8 Judgement Order (*see id.*, 4:17–23, 5:1–6:9), the Court **ORDERS** judgment entered in  
9 favor of Plaintiff Capital Partners Funding, LLC, and against Plaintiffs BMG Logistics,  
10 Inc. and Brianna Goodwin, jointly and severally, as follows:

- 11 1. Monetary damages in the amount of \$106,540.28;
  - 12 2. Pre-judgment interest at the default rate of interest in the total amount of  
13 \$81,503.31;
  - 14 3. Attorneys' fees and costs in the amount of \$23,181.64; and
  - 15 4. Post-judgment interest in accordance with 28 U.S.C. § 1963.
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17 **IT IS SO ORDERED.**

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19 DATED: July 1, 2014

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21 Hon. Thomas J. Whelan  
22 United States District Judge  
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